

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAUL J. McNALLY, as he is TRUSTEE,
MASSACHUSETTS LABORERS' HEALTH AND
WELFARE FUND and NEW ENGLAND LABORERS'
TRAINING TRUST FUND; JAMES MERLONI, JR.,
as he is TRUSTEE, MASSACHUSETTS LABORERS'
PENSION FUND and MASSACHUSETTS LEGAL
SERVICES FUND; MARTIN F. WALSH, as he is
TRUSTEE, MASSACHUSETTS LABORERS'
ANNUITY FUND,

Plaintiffs

C.A. No. 05-11624 RWZ

vs.

J. MICHAEL LANDSCAPING, INC.,
Defendant

and

BARLETTA ENGINEERING CORPORATION;
MODERN CONTINENTAL CONSTRUCTION CO.,
INC.; and PEABODY CONSTRUCTION COMPANY,
INC.,

Reach-and-Apply Defendants

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Upon the Complaint and Exhibits attached thereto and the Memorandum in support of their Motion for Preliminary Injunction, the Plaintiff Trustees, pursuant to §502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(3), and Rule 65(a), Federal Rules of Civil Procedure, respectfully request this Court to enter a Preliminary Injunction enjoining Reach-and-Apply Defendants Barletta Engineering Corporation, Modern Continental Construction Co., Inc., and Peabody Construction Co., Inc., and their agents, servants, employees, attorneys, and upon those persons in active participation or concert with them and those persons acting at their command who receive actual notices of a Preliminary

Injunction order by personal service or otherwise, and each and every one of them, from secreting, concealing, destroying, damaging, selling, transferring, pledging, encumbering, assigning, or in any way or manner disposing of or reducing the value of, or making any payment to defendant J. Michael Landscaping, Inc. ("J. Michael") on account of sums that are due or will hereafter become due J. Michael from the Reach-and-Apply Defendants.

As grounds therefore, Plaintiffs state as follows:

- 1) Based on the foregoing Complaint and Exhibits, Plaintiffs have exhibited a likelihood of success on the merits;
- 2) The Reach-and-Apply Defendants' secreting, concealing, destroying, damaging, selling, transferring, pledging, encumbering, assigning, or in any way or manner disposing of or reducing the value of, or making any payment to defendant J. Michael on account of sums that are due or will hereafter become due J. Michael from the Reach-and-Apply Defendants will result in irreparable injury, loss and damage to the Plaintiffs;
- 3) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the Reach-and-Apply Defendants but will prevent irreparable injury to the Plaintiffs, and would further the public interest;
- 4) There is no adequate remedy at law;
- 5) There is no known insurance available to satisfy the judgment the plaintiffs will obtain against Defendant J. Michael; and
- 6) The funds held by the Reach-and-Apply Defendants cannot be attached or taken on execution except pursuant to G.L. c. 214, §3(6).

WHEREFORE, Plaintiffs move this Court to grant a preliminary injunction compelling the Reach-and-Apply Defendants and their agents, servants, employees, attorneys, and upon those persons in active participation or concert with them and those persons acting at their command who receive actual notices of a Preliminary Injunction order by personal service or otherwise, and each and every one of them, to refrain from secreting, concealing, destroying, damaging, selling, transferring, pledging, encumbering, assigning, or in any way or manner

disposing of or reducing the value of, or making any payment to defendant J. Michael on account of sums that are due or will hereafter become due J. Michael from the Reach-and-Apply Defendants. Plaintiffs further request that they be excused from posting a bond.

Respectfully submitted,

PAUL J. McNALLY, as he is
TRUSTEE, MASSACHUSETTS
LABORERS' HEALTH AND WELFARE
FUND, et al,

By their attorneys,

/s/ Gregory A. Geiman
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(617) 742-0208

Dated: December 2, 2005

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel hereby certifies, in accordance with Rule 7.1(A)(2), that prior to filing Plaintiffs' Motion for Preliminary Injunction in this matter that his office communicated with each of the Reach-and-Apply Defendants in a good faith effort to narrow the issues of dispute in this matter.

/s/ Gregory A. Geiman
Gregory A. Geiman, Esquire

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiffs' Motion for Preliminary Injunction has been served by first class mail upon the defendant, J. Michael Landscaping, Inc. by its attorney Paul Hogan at Hogan & Associates, 63 Chatham Street, Boston, MA 02109 and upon the reach-and-apply defendants, Barletta Engineering Corporation at 40 Shawmut Road, Suite #200, Canton, MA 02021, Modern Continental Construction Co., Inc. at 600 Memorial Drive, Cambridge, MA 02139, and Peabody Construction Company, Inc. at 536 Granite Street, Braintree, MA 02184 this 2nd day of December, 2005.

/s/ Gregory A. Geiman
Gregory A. Geiman, Esquire

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